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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,697	07/10/2000	Kevin Benson McNeil	6033CC	9466

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EXAMINER

WILLIAMS, KEVIN D

ART UNIT PAPER NUMBER

2854

6

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/612,697

Applicant(s)

MCNEIL

Examiner

Kevin D. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 9-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-19 of U.S. Patent No. 5,802,974. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant invention are met by the claims of Patent 5,802,974.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 9-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Meschi (US 5,720,223).

Meschi teaches a process for registering indicia and lines of termination in a moving sheet as claimed and comprising the steps of providing a generally planar sheet, transporting said sheet in a first direction (Fig. 1; at 1) at a first velocity, applying indicia to said sheet from a printer (col. 4, line 65) movable in said first direction relative to said sheet, said printer being movable at a second velocity, imparting lines of termination to said sheet from a blade 16 movable in said first direction relative to said sheet, said blade being movable at a third velocity, said lines of termination being spaced apart from said indicia in a spacing (Fig. 11), varying one of said second or third velocities independent of the other (col. 4, lines 14-17) to maintain said spacing within a desired range wherein a path length of said moving sheet between said printer and said blade remains substantially constant, applying indicia to said sheet at a position spaced apart from said lines of termination at a distance, sensing the position of said indicia 37 by sensing the difference in reflectance between said indicia and said sheet (col. 6, lines 1-10), determining 22a the position of said blade relative to said sheet, and

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determining 22a,18 the actual spacing between said indicia and said lines of termination (col. 5, lines 7-25).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14, 15, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meschi.

With respect to claims 14 and 15, Meschi teaches the claimed invention but does not expressly teach subtracting said position of said blade and said distance between said indicia and said lines of termination to produce an error signal and one of said second velocity and said third velocity is varied when said error signal exceeds a preset value.

Meschi teaches an encoder 22 that determines the position of blade 16. Encoders 26 and 18 in conjunction with processor 24 determine the distance between said indicia and said lines of termination. All three encoders obviously work in conjunction with the processor 24 to produce an error signal which consequently varies the speed of roller 13 and blade 16 when the signal exceeds a preset value.

With respect to claims 16 and 17, Meschi teaches the claimed invention except for the spacing between said lines of termination and said indicia having a tolerance range within +/- 0.125 and within +/-0.063.

A tolerance range for the spacing between the lines of termination and the indicia is apparent in the Meschi device. When mechanical tolerances inherent to parts from the machining process are considered, at least a tolerance range derived from the mechanical tolerances of the parts of Meschi exists. It has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. MPEP 2144.05 (II) (A).

Claim Rejections - 35 USC § 103

6. Claims 18, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meschi in view of Fokos (US 5,129,568).

Meschi teaches a process for registering indicia and lines of termination in a moving sheet as claimed and comprising the steps of providing a generally planar sheet, transporting said sheet in a first direction (Fig. 1; at 1) at a first velocity, applying indicia to said sheet from a printer (col. 4, line 65) movable in said first direction relative to said sheet, said printer being movable at a second velocity, imparting perforations to said sheet from a perforator blade 16 movable in said first direction relative to said sheet, said perforator blade being movable at a third velocity, said perforations being spaced apart from said indicia in a spacing (Fig. 11), varying said third velocity independent of said second velocity (col. 4, lines 14-17) or varying movement of said chop off blade independent of said second velocity to maintain said spacing of said perforations within a desired range wherein a path length of said moving sheet remains substantially constant, determining 22a the position of said perforator blade, and

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determining 22a,18 the actual spacing between said indicia and said perforations (col. 5, lines 7-25).

Meschi teaches the claimed invention except for imparting chop off cuts from a chop off blade to separate said continuous sheet into discrete units, wherein said chop off blade is movable in said first direction relative to said sheet, said chop off cuts being spaced apart from said indicia at a spacing, maintaining said spacing of perforations and chop off cuts within a desired range, where the path length remains substantially constant between said printer and said chop off blade.

Fokos teaches imparting chop off cuts from a chop off blade 22 to separate said continuous sheet into discrete units, wherein said chop off blade is movable in said first direction relative to said sheet, said chop off cuts being spaced apart from said indicia at a spacing, maintaining said spacing of perforations and chop off cuts within a desired range, where the path length remains substantially constant between said printer and said chop off blade.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Meschi to have the chop of blade as taught by Fokos, in order to cut a web into useable sections.

Allowable Subject Matter

7. Claims 19, 20, and 23 objected to as being dependent upon a rejected base claim, but would be allowable if the double patenting rejections are overcome and the

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claims are rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin D. Williams whose telephone number is (703) 305-3036. The examiner can normally be reached on Monday - Friday, 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew H. Hirshfeld can be reached on (703) 305-6619. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-4399 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

KDW
August 26, 2002


ANDREW H. HIRSHFELD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800